there is a separate provision for maintenance. *Wynch* v. *Wynch*, 1 Cox Ch. 433. In some cases, however, the exception has the earmarks of a flat rule of policy regardless of expressed intention, a policy in favor of the child being supported. Thus, when the testator directed the interest to be accumulated until the legatee reached twenty-one, one court, nevertheless, implied a gift of income for maintenance. *Mole* v. *Mole*, 1 Dick. Rep. 310. But whatever the scope of the exception, the principal case seems clearly not to fall within it; for the fact that the child had not been dependent upon the mother for support precludes the necessity or probable intention of a gift of the intermediate income.

LIMITATION OF ACTIONS — ACCRUAL OF ACTION — CONSTRUCTION OF STOCKHOLDERS' LIABILITY STATUTE. — A Minnesota statute provides that on petition by the receiver of an insolvent corporation the court may levy assessments upon stockholders if the corporate assets are shown to be insufficient to discharge the corporate indebtedness. GEN. STAT. 1913, § 6645 *et seq.* In 1907 a corporation was declared insolvent and a receiver appointed. In 1915 the receiver petitioned for a hearing and obtained an assessment. Later the same year he sues a stockholder upon the assessment, and is met with a defence of the six year Statute of Limitations. *Held*, the action is barred by the Statute of Limitations. *Shearer* v. *Christy*, 161 N. W. 498 (Minn.).

The general principle seems clear that the Statute of Limitations does not begin to run upon a claim until suit may be brought to enforce it. *Staninger* v. *Tabor*, 103 Ill. App. 330; *In re Hanlin's Estate*, 133 Wis. 140, 113 N. W. 411. Where some condition beyond the control of the plaintiff must first be satisfied, the statute does not run until such condition is fulfilled. *Harriman* v. *Wilkins*, 20 Me. 93. See 1 WOOD, LIMITATIONS, 4 ed., § 122 a. But where the preliminary act or condition precedent to direct prosecution of the claim is within the plaintiff's control, the statute begins to run as soon as such act may reasonably be accomplished. *Shelburne* v. *Robinson*, 8 Ill. 597; *Williams* v. *Bergin*, 116 Cal. 56, 47 Pac. 877; *Bauserman* v. *Charlott*, 46 Kan. 480, 26 Pac. 1051. *Contra*, *Hildebrand* v. *Kinney*, 172 Ind. 447, 87 N. E. 832. In the principal case the court proceeds upon the basis that the right of action against the stockholder arises as soon as the receiver is appointed. Other courts, however, in construing this Minnesota statute have held that the right of action does not arise until the insufficiency of corporate assets is adjudicated and the assessment is levied by the court. *Bernheimer* v. *Converse*, 206 U. S. 516; *Hale* v. *Cushman*, 96 Me. 148, 51 Atl. 874. Similar provisions in other states have likewise been interpreted as giving rise to a right of action only when the assessment is levied. *Goss* v. *Carter*, 156 Fed. 746; *Mister* v. *Thomas*, 122 Md. 445, 89 Atl. 844; *Shipman* v. *Treadwell*, 208 N. Y. 404, 102 N. E. 634. And statutes making stockholders of insolvent corporations liable on unpaid subscriptions have received a similar construction. *Hawkins* v. *Glenn*, 131 U. S. 319; *Gillin* v. *Sawyer*, 93 Me. 151, 44 Atl. 677. It would seem that neither of these views is desirable. On the one hand, the creditors should be protected; on the other, the stockholder should not have liability hanging over him indefinitely until the receiver may choose to get an assessment levied. It is the policy of the law to wind up insolvent estates speedily in the interest both of the creditor and of the stockholder. Under such a statute the receiver may bring proceedings against the stockholders as soon as the corporate assets have been so marshalled that the propriety of an assessment can be demonstrated to the court with fair certainty. Limitations should, therefore, begin to run as soon as this step might reasonably be accomplished.

MANDAMUS — ACTS SUBJECT TO MANDAMUS — TEMPORARY POSSESSION OF PUBLIC OFFICE PENDING RESULT OF CONTEST. — The defendant, governor

of Arizona, ran for reëlection, opposed by the plaintiff. The secretary of state canvassed the returns and duly issued to the plaintiff a certificate of election. The defendant, disputing the result of the election, refused to surrender office at the expiration of his term, and instituted statutory contest proceedings. The plaintiff seeks a writ of *mandamus* to obtain possession of the office and property pertaining thereto, pending the result of the contest. *Held*, that the plaintiff is entitled to the writ. *Campbell* v. *Hunt*, 162 Pac. 882 (Ariz.).

A certificate of election duly executed by the proper authority affords a *prima facie* title to a public office. See *Kerr* v. *Trego*, 47 Pa. St. 292, 296. This may be disputed and the election contested in *quo warranto* or statutory proceedings. See *Frey* v. *Michie*, 68 Mich. 323, 327, 36 N. W. 184, 186. These being the proper actions, it is generally held that the title to office cannot be litigated in *mandamus*. *People ex rel. Wren* v. *Goetting*, 133 N. Y. 569, 30 N. E. 968. See 24 HARV. L. REV. 313. *Cf. Pipper* v. *Carpenter*, 122 Mich. 688, 81 N. W. 962. The claimant *prima facie* entitled may properly invoke this remedy, however, to compel a prior incumbent to surrender possession of the office and its appurtenances. *Couch* v. *State ex rel. Brown*, 169 Ind. 269, 82 N. E. 457; *State ex rel. Voss* v. *Quinn*, 86 Neb. 758, 126 N. W. 388. There will indeed be no relief while an appeal is pending from a judgment against the plaintiff in *quo warranto* or contest proceedings. *Swartz* v. *Large*, 47 Kan. 304, 27 Pac. 993; *Allen* v. *Robinson*, 17 Minn. 113. But if no such judgment has been rendered, the writ of *mandamus* is granted although other proceedings are pending. *People ex rel. Cummings* v. *Head*, 25 Ill. 325; *Crowell* v. *Lambert*, 10 Minn. 369. See HIGH, EXTRAORDINARY LEGAL REMEDIES, 3 ed., § 74. The writ does not affect the merits of the ultimate contest, but merely the right to immediate possession. *State ex rel. Jones* v. *Oates*, 86 Wis. 634, 57 N. W. 296. This result is sound, in view of the importance of possession of an office. For the plaintiff has no adequate remedy, if he must await the result of the more dilatory contest before securing possession. It is, moreover, strongly to the public interest that the candidate legally declared elected should take office at once. Otherwise, a prior incumbent could retain possession in violation of the wishes of the electorate merely by instituting a contest, the settlement of which might be indefinitely delayed. See MCCRARY, ELECTIONS, 4 ed., § 302.

MASTER AND SERVANT — EMPLOYER'S LIABILITY — ASSAULT BY FELLOW SERVANT. — The defendant retained in his employ a workman known to be vicious, lawless and quarrelsome. This workman murdered the plaintiff's intestate, while both were engaged in the common employment. U. S. COMP. STAT. 1916, §§ 8657–8665, make negligence the basis of an employer's liability. *Held*, that the plaintiff may not recover. *Roebuck* v. *Atchison, etc. Ry. Co.*, 162 Pac. 1153 (Kan.).

A master must exercise due care for the safety of his servants in providing a place in which, and appliances with which, to work. *McCombs* v. *Pittsburgh, etc. Ry. Co.*, 130 Pa. 182, 18 Atl. 613. The master must also, in employing servants, have regard to the safety of the fellow servants. Thus, he is under a duty not to employ, or retain in his employ, workmen whom he knows or should know to be so careless or incompetent in the performance of their duties as to subject their fellows to risk of injury. *Baltimore & Ohio R. Co.* v. *Henthorne*, 73 Fed. 634; *Laning* v. *New York, etc. R. Co.*, 49 N. Y. 521. But the courts generally hold that the employer has no duty to guard against injury caused by an act which is not done in pursuance of the servant's duty. See *Palos, etc. Co.* v. *Benson*, 145 Ala. 664, 39 So. 727. Thus the employer has been held not liable for an assault by one servant upon another, committed out of the scope of the offender's duty. *Palos, etc. Co.* v. *Benson*, 145 Ala. 664, 39 So. 727; *Campbell* v. *Northern Pacific R. Co.*, 51 Minn. 488, 53 N. W. 768; *Crelly* v.